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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Randy Scott Decker, et al.,

10 Plaintiffs,

11 v.

12 Omer Zonic, et al.,

13 Defendants.
14

No. CV-23-08077-PCT-DWL

ORDER

15 The Court has an independent obligation to determine whether it has subject-matter
16 jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). Pursuant to
17 Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[i]f the court determines at any
18 time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

19 Defendant Omer Zonic removed this action solely on the basis of diversity
20 jurisdiction. (Doc. 1.) The party seeking to invoke diversity jurisdiction has the burden of
21 proof, *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986), by a preponderance of the
22 evidence. *McNatt v. Allied-Signal, Inc.*, 972 F.2d 1340 (9th Cir. 1992); *see* 13B Federal
23 Practice § 3611 at 521 & n. 34. There is a strong presumption against removal
24 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (“Federal jurisdiction
25 must be rejected if there is any doubt as to the right of removal in the first instance.”).

26 Diversity jurisdiction exists when there is complete diversity of citizenship between
27 the plaintiffs and the defendants and the amount in controversy exceeds \$75,000, exclusive
28 of interests and costs. 28 U.S.C. § 1332. A controversy meets this requirement when “all

1 the persons on one side of it are citizens of different states from all the persons on the other
2 side.” *Strawbridge v. Curtiss*, 7 U.S. 267 (1806). Having reviewed the Notice of Removal
3 to determine if subject matter jurisdiction exists, the Court finds that
4 the Notice of Removal is facially deficient because it fails to affirmatively set forth the
5 facts necessary to determine the citizenship of certain parties.

6 The Notice of Removal states that Plaintiffs were “residents” of Arizona and
7 Defendant Zonic was a “resident” of Nevada. (Doc. 1 ¶¶ 2, 5.) But “[i]t has long been
8 settled that residence and citizenship [are] wholly different things within the meaning of
9 the Constitution and the laws defining and regulating the jurisdiction of the . . . courts of
10 the United States; and that a mere averment of residence in a particular state is not an
11 averment of citizenship in that state for the purpose of jurisdiction.” *Steigleder v.*
12 *McQuesten*, 198 U.S. 141, 143 (1905). “To be a citizen of a state, a natural person must
13 first be a citizen of the United States. The natural person’s state citizenship is then
14 determined by her state of domicile, not her state of residence. A person’s domicile is her
15 *permanent* home, where she resides with the intention to remain or to which she intends to
16 return.” *Kanter v. Warner–Lambert Co.*, 265 F.3d 853, 858-59 (9th Cir. 2001) (emphasis
17 added) (citations omitted). *See also id.* (“In this case, neither Plaintiffs’ complaint nor
18 [Defendants’] notice of removal made any allegation regarding Plaintiffs’ state citizenship.
19 Since the party asserting diversity jurisdiction bears the burden of proof, [Defendants’]
20 failure to specify Plaintiffs’ state citizenship was fatal to Defendants’ assertion of diversity
21 jurisdiction.”). Thus, an allegation regarding a party’s state of residence fails to establish
22 his or her state of domicile for diversity purposes.

23 To cure this pleading deficiency, the Court will require Zonic to file an
24 amended notice of removal that affirmatively states the citizenship of Plaintiffs and Zonic
25 under the correct legal standard. *Star Ins. Co. v. West*, 2010 WL 3715155, *2 (D. Ariz.
26 2010); *see also NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 612 (9th Cir. 2016) (“Courts
27 may permit parties to amend defective allegations of jurisdiction at any stage in the
28 proceedings.”). Defendant is advised that failure to timely comply with this order shall

1 result in the remand of this action without further notice for lack of subject matter
2 jurisdiction.

3 To ensure that the requirements of subject-matter jurisdiction are met, the Court will
4 require Plaintiffs to file a notice informing the Court of their state(s) of domicile.

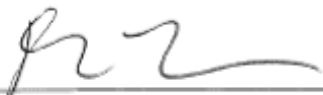
5 Accordingly,

6 **IT IS ORDERED** that Plaintiffs shall file a notice informing the Court of their
7 state(s) of domicile by **May 26, 2023**.

8 **IT IS FURTHER ORDERED** that Zonic shall file an amended notice of removal
9 properly stating a jurisdictional basis for this action no later than **June 2, 2023**.

10 **IT IS FURTHER ORDERED** that if Zonic fails to file an amended notice of
11 removal by **June 2, 2023**, the Clerk of Court shall remand this action to state court without
12 further notice.

13 Dated this 19th day of May, 2023.

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18 Dominic W. Lanza
19 United States District Judge
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